

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
EVERGREEN CHIROPRACTIC CLINIC,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 85-129

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice of violation and civil penalty of \$250 for open burning of natural vegetation in violation of Section 400-035 of Regulation I, came on for formal hearing before the Pollution Control Hearings Board, Lawrence J. Faulk (presiding) and Gayle Rothrock, September 6, 1985, at Vancouver. The formal hearing was electronically recorded.

Appellant Dr. Olson, owner of Evergreen Chiropractic Clinic appeared and represented himself. Respondent Southwest Air Pollution Authority (SWAPCA) appeared by its attorney David Jahn.

1 Witnesses were sworn and testified. Exhibits were examined.
2 From the testimony heard and exhibits examined, the Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent SWAPCA is a municipal corporation with responsibility
6 for conducting a program of air pollution prevention and control
7 pursuant to the Washington Clean Air Act, chapter 70.94 RCW, in a
8 multi-county area which includes Clark County, the site of the events
9 at issue in this case.

10 SWAPCA has, pursuant to RCW 43.21B.270, filed with this Board a
11 certified copy of its revised general regulation, as adopted and
12 amended, the contents of which are noticed.

13 II

14 On June 12, 1985, in the afternoon, appellant allegedly allowed or
15 caused an outdoor fire of natural vegetation at 811 NE 112th Avenue,
16 Vancouver, Washington.

17 III

18 There were two fire piles consisting of natural vegetation. The
19 inspector from respondent agency was on routine patrol and noticed
20 white smoke coming from appellant clinic's front yard. He traveled
21 closer to the scene of the fire. The piles were 10 feet by 15 feet
22 and 8 feet by 12 feet consisting of grass, thatchings, and clippings
23 from the clinic's grounds.

24 IV

25 Respondent SWAPCA's inspector arrived at the fire site at 3:57

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1 p.m., observed natural vegetation burning and discussed the codes and
2 practices of open burning with appellant. This included a discussion
3 of the dates of the spring burn season policy for private residences
4 adopted by SWAPCA, a season which started March 2 and ended June 15.
5 The chiropractic clinic is a commercial establishment, although it was
6 formerly a private residence. There is no open burn season for
7 commercial establishments. The appellant was issued and signed a
8 field notice of violation for violating Section 400-035 of General
9 Regulations dealing with commercial open burning.

10 V

11 On June 14, 1985, appellant was issued a regular notice of
12 violation and a letter from the Executive Director of respondent
13 agency levying a \$250 fine for violation of Section 400-035 of
14 Regulation I which he received June 18, 1985. From this appellant
15 appealed to this Board on July 15, 1985.

16 VI

17 Appellant did not have a permit. He did not think he needed one
18 because he was under the impression that the burn season applied to
19 natural vegetation on his clinic's grounds. He indicated that he saw
20 other open fires that same day. The fire was attended and thus was
21 under control. The fire was put out when the inspector requested that
22 it be extinguished.

23 VII

24 Appellant has received no prior violations of the SWAPCA General
25 Regulations.

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VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The Legislature of the State of Washington has enacted the following policy on outdoor fires:

It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. RCW 70.94.740.

II

Pursuant to this and other legislative authority, the respondent has adopted its Regulation I, Section 400-035, which provides in relevant part:

No person shall ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open fire within the jurisdiction of the Authority, except as provided in this Regulation.

(1) Open Burning may be done under permit:

(a) Burning permits may be provided by the local fire department, fire district or Washington State Department of Natural Resources.

(b) No permit shall be issued unless the Control Officer is satisfied that:

(1) No practical alternate method is available for the disposal of the

1 material to be burned. (The Authority
2 has a written Open Outdoor Fire Policy
3 describing times, areas and kinds of
permitted open fires.)

4 III

5 Respondent agency established that an unauthorized fire of natural
6 vegetation did occur on June 12, 1985. It was unauthorized because
7 the location of the fire was a commercial establishment and the
8 appellant had not obtained a permit. Therefore, Section 400-035 of
9 SWAPCA Regulation I was violated. Had this fire occurred at a private
10 residence, there would have been no violation because it did occur
11 during the annual spring burn season. His clinic is a former
12 residence and if, in fact, he resided at the address of the fire as
13 opposed to operating his business at the address, there would have
14 been no violation. Appellant did not contest that an outdoor fire had
15 been conducted or that he had no permit to conduct it.

16 IV

17 Ignorance of open burning regulations is no defense to a citation
18 of their violation. J.J. Welcome & Sons v. PSAPCA, PCHB No. 42,
19 (1971). The Clean Air Act is a strict liability statute and,
20 therefore, the violator's state of mind or intentions are irrelevant
21 to the question of liability for penalties under its authority.
22 However, such matters can be relevant to the issue of how much the
23 penalty should be in any case.

24 V

25 In determining whether a fine should be sustained against Dr.

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1 Olson and the Evergreen Chiropractic Clinic, the surrounding facts and
2 circumstances are relevant. Factors bearing on reasonableness must be
3 considered. These include:

- 4 (a) the nature of the violation;
- 5 (b) the prior behavior of the violator; and
- 6 (c) actions taken to solve the problem.

7 VI

8 Appellant Olson, operator of the Evergreen Chiropractic Clinic,
9 did cause this minor violation of Section 400-035.

10 He has had no prior violations of SWAPCA regulations and he put
11 the fire out when asked to do so by the inspector from respondent
12 agency. His testimony indicates that he is not likely to commit
13 further violations.

14 VII

15 The purpose of civil penalties is not primarily punitive but
16 rather to achieve compliance by changing behavior. Only a portion of
17 the penalties need to be left intact to achieve the deterrence
18 objectives of the law. However the Board points out again that
19 SWAPCA's open burning regulations are not a model of clarity. The
20 agency would assist the public and help to avoid appeals like this one
21 if its general Regulations were revised to explain the relationship of
22 the burn season to the permit program and their relevant application
23 to residential and commercial properties.

24 Weighing the seriousness of the offense, the behavior of the
25 violator, and objective of general as well as specific deterrence, we

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1 conclude that the Order set forth below is appropriate.

2 IX

3 Any Finding of Fact which is deemed a Conclusion of Law is hereby
4 adopted as such.

5 From these Conclusions of Law the Board enters this
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ORDER

The notice of violation is affirmed, however, \$200 of the civil penalty is suspended, provided neither appellant clinic nor Dr. Olson violate the SWAPCA regulations for a period of one year from the effective date of this order.

DONE this 27th day of September, 1985.

POLLUTION CONTROL HEARINGS BOARD

 9/27/85
LAWRENCE J. FAULK, Chairman


GAYLE ROTHROCK, Vice Chairman